

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

XO California, Inc.,

Complainant,

vs.

Verizon California, Inc.,

Defendant.

(ECP)

Case 03-11-024

(Filed November 26, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING**

On November 26, 2003, XO California, Inc. (XO)<sup>1</sup> filed the above-titled proceeding pursuant to Decision (D.) 95-12-056. On December 12, with the acquiescence of XO, Verizon California, Inc. (Verizon) sought leave from the undersigned Administrative Law Judge (ALJ) to file its answer seven days after the date set forth in the Commission's Instructions to Answer and Hearing Notice. Upon further discussions, the parties expressed a desire to continue to try to reach an accord, and requested additional time for Verizon to file its answer. This ruling confirms the granting of the parties' request for an extension until January 12, 2004, and also sets out the current expedited complaint process, which has evolved since the issuance of D.95-12-056.

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<sup>1</sup> XO was formerly known as NEXTLINK California, Inc.

### **The Expedited Complaint Process**

D.95-12-056 delineates a “streamlined process” to resolve disputes arising out of interconnection agreements (ICAs). Generally, the process operates under the timing and procedural guidelines of Resolution ALJ-163’s Expedited Complaint Procedure (ECP). For instance, both the expedited complaint process and the ECP allot to the defendant 20 days from the date of issuance of the Instructions to Answer to respond to the complaint, instead of the 30 days given to answer a “standard” complaint under the Commission’s Rules of Practice and Procedure. In addition, both promptly set a hearing date and combine the notice of the hearing with the Instructions to Answer.

Still, there are differences. Customarily, parties are not represented by legal counsel in ECPs; however, since ICAs tend to be between two businesses (an incumbent local exchange carrier and a competitive local exchange carrier), legal counsel has represented each of the previous parties. ECP hearings are not transcribed; transcription of hearings under the expedited complaint process is at the discretion of the ALJ. In addition, any Commission decision issued may include separately stated findings of fact and conclusions of law, which may be considered as precedent. To date, the expedited complaint process has been customized to respond to the specific needs of each set of parties that have utilized it. While discovery has not been precluded, it was not requested in the previous expedited proceedings.<sup>2</sup>

At the inception of the expedited complaint process, the Commission directed an aggrieved party to an ICA to initially file a motion in the Local

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<sup>2</sup> It was requested in one proceeding that started out as an expedited complaint process case but later was converted to a regular complaint case because of scheduling and the desire for the full range of litigation tools.

Competition docket (Rulemaking 95-05-043/Investigation 95-05-044). Such a motion would be assigned to an ALJ who would mediate or facilitate the dispute.<sup>3</sup> If the mediation failed, the mediating ALJ would direct the parties to submit short pleadings and issue a written ruling to resolve the dispute.<sup>4</sup> If a party objected to the ALJ's ruling, the party was then permitted to file a formal complaint under the expedited process. The resulting formal complaint would go forward with the burden of proof on the party challenging the ALJ's ruling.

However, time and experience have indicated that filing a new complaint under the expedited process and including with it a request for mediation (if mediation is desired) are a pragmatic approach. Sorting interconnection disputes through the Local Competition proceeding is no longer a time saving method, because the number and complexity of issues generated in and directed to the docket have increased significantly over the last eight years. Moreover, the Local Competition proceeding will not remain open indefinitely, so its designation as the initial stop in the interconnection dispute resolution process was never intended to be permanent. At present, parties utilize the expedited process to address disputes over discrete issues. The process is least effective for policy matters and matters requiring extensive hearings and substantial pre-filed testimony or post-hearing briefing.

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<sup>3</sup> As a condition of having an ALJ assigned to mediate, the parties were required to show that they had first attempted to resolve the dispute within their own companies through escalation to the executive level within each company.

<sup>4</sup> Disputes would be reviewed and resolved under the adopted preferred outcomes guidelines.

### **The Procedural Schedule**

As stated above, Verizon's answer is due on January 12, 2004. The parties have the intervening time to try to reach an amicable accord. I will keep our January 21, 2004 hearing date on the calendar for a prehearing and/or status conference. In accordance with the parties' request, I have set February 19, 2004, as the revised date for an evidentiary hearing, if one is warranted. If there are no factual issues in dispute, the scheduled date and time could be used for oral arguments. This schedule will be further revised, as circumstances require.

Accordingly, **IT IS RULED** that:

1. Verizon California, Inc.'s answer to the November 26, 2003 expedited complaint filed by XO California, Inc. shall be due on January 12, 2004.
2. Unless an accord is reached, the scheduled January 21, 2004 10 a.m. hearing will be a prehearing and/or status conference in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, California.
3. The evidentiary hearing shall take place on February 19, 2004 at 10 a.m. in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, California.
4. Parties shall also serve copies of all subsequent pleadings, correspondence, and supporting documents by electronic mail to the undersigned at [jar@cpuc.ca.gov](mailto:jar@cpuc.ca.gov).

Dated December 24, 2003, at San Francisco, California.

/s/ JACQUELINE A. REED

Jacqueline A. Reed  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated December 24, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.